

Press Release

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Supervisor Derry Clarifies Attorney-Client Privilege Issue

SAN BERNARDINO, CA – A story in the Sun newspaper today declares the San Bernardino County Board of Supervisors refused to waive attorney-client privilege in the Colonies matter (Supes reject lifting curtain, March 24, 2010). This statement and the story headline are incorrect.

The San Bernardino County Board of Supervisors released a statement of facts regarding closed session discussions that occurred yesterday, March 23rd. The statement is very clear; the Board of Supervisors is still considering the request from the Attorney General's office of California to waive privilege.

It is important to make the distinction between attorney-client privilege that is at the sole discretion of the Board of Supervisors, and another similar privilege related to the Colonies matter that cannot unilaterally be waived by the county referred to as "mediation privilege."

Mediation is the process by which sides meet with a judge in an effort to come to a mutual agreement and avoid further court costs. Under California Law, both sides in the lawsuit would have to waive privilege for the discussions to be provided to a third party. As outlined in the March 23rd release from the Board of Supervisors, the Colonies have formally advised the County that they have refused to waive mediation privilege. Therefore, under California Law, the County is prohibited from releasing that information.

The Board of Supervisors has neither declined to waive privilege, nor have we refused the request by the Attorney General's office. We are still attempting to understand the totality of this request as it relates to ongoing litigation issues and whether or not it would further jeopardize taxpayer dollars. As I have stated, I generally support this request and all reasonable attempts to open up government to greater scrutiny. But, we should and are proceeding with the request carefully.

I also should make it clear that two members of the Board of Supervisors, Supervisor Brad Mitzelfelt and I, were not in office when the Colonies matter was being deliberated. We have even greater need to proceed cautiously. Most of what I know about the Colonies settlement I read in this newspaper.

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As the statement read, “Counsel for the County will meet and confer with the Attorney General in a good faith attempt to take the foregoing into account, and to discuss the position taken by Colonies which prevents the County from waiving the mediation privilege.

Thereafter, the Board will receive an update from its counsel, take everything into account, make an informed decision, and in due course announce its position on the request that it waive attorney client privilege.”

The Board of Supervisors has not voted on the Attorney General’s request and is still considering it. It has not been “rejected.”